

### REMARKS

This responds to the Office Action dated July 22, 2010. In the Office Action, the Examiner:

- rejected claims 1, 3-20, 26, and 27 under 35 U.S.C. 1 § 03(a) as being unpatentable over Nahan et al. (U.S. Patent No. 5,664,111) in view of Stack (U.S. Patent No. 6,076,070) and Reuhl et al. (U.S. Patent No. 5,873,069); and
- rejected claims 2 and 21-25 under 35 U.S.C. § 103(a) as being unpatentable over Nahan et al. (U.S. Patent No. 5,664,111) in view of Stack (U.S. Patent No. 6,076,070) Reuhl et al. (U.S. Patent No. 5,873,069) as applied to claim 1 above, and further in view of Woolston (U.S. Patent No. 6,202,051).

After entry of this amendment, the pending claims are: claims 1-27.

### Changes to the Claims

Support for the amendments to claims 1, 16, 18, 21, and 25 can be found at least on page 12, line 6 to page 13, line 6 of the specification.

### 35 U.S.C. §103(a)

#### Claims 1-27

Claim 1 requires “receiving data from an independent seller..., the data identifying a good offered for sale by the independent seller and representing the independent seller's agreement to sell the good at an unspecified fixed price to be determined by the marketer controller as a function of another party's price for a comparable good, in accordance with a predetermined method”. Thus, the data received from the seller includes an agreement by the seller to sell a good at an unspecified fixed price that is determined by the marketer controller based on a vendor's price of a comparable good. For example, the seller may provide a UPC code that identifies the good without specifying the price of the good. The marketer system then obtains a vendor's price of a comparable good and establishes the sale price for the good based on the vendor's price of the comparable good, as required by claim 1. It is noted that prior

to obtaining the vendor's price of the comparable good, the seller's good is not associated with a price.

Nahan does not disclose receiving data from the independent seller representing the independent seller's agreement to sell the good at an unspecified fixed price to be determined by the marketer controller as a function of another party's price for a comparable good, as required by claim 1. The Examiner cites various sections of Nahan, but the only cited section of Nahan that discusses pricing of goods merely discloses calculating a price difference ratio based on a retail price for the good and a wholesale price for the good (e.g., see Nahan column 13, lines 13-28). This section of Nahan does not disclose who specifies the retail and wholesale prices and in what manner the retail and wholesale prices are specified. Therefore, Nahan cannot disclose receiving data from the independent seller representing the independent seller's agreement to sell the good at an unspecified fixed price to be determined by the marketer controller as a function of another party's price for a comparable good.

Stack and Reuhl also fail to address the deficiencies of Nahan with respect to claim 1. For example, the Examiner cites Stack column 2, lines 34-60 and column 3, line 45 to column 4, line 15, and column 4, lines 31-33,<sup>1</sup> which merely disclose comparing a seller's price of a good with a competitor's price of the good and situations in which a price of a good is reduced. The Applicant notes that in order to compare a seller's price of a with a competitor's price of the good, the seller's good must necessarily be associated with a price. Furthermore, to reduce a price of a seller's good, the seller's good must necessarily be associated with a price. In other words, the price of the good has already been specified and Stack is merely comparing a competitor's price and reducing the seller's price of the good. There is nothing in these sections of Stack that disclose that the marketer system receives data representing the independent seller's agreement to sell the good at an unspecified fixed price to be determined by the marketer controller as a function of another party's price for a comparable good, as required by claim 1. Similarly, the Examiner cites Reuhl column 4, lines 7-19, which merely discloses comparing an active price of the seller's good with a competitor's price of the good and changing the price of the seller's good accordingly. As with Stack, this section of Reuhl necessarily requires that the good is already associated with a price. There is nothing in this section of Reuhl

<sup>1</sup> Page 4 of the Office Action dated July 22, 2010.

that discloses that the marketeer system receives data representing the independent seller's agreement to sell the good at an unspecified fixed price to be determined by the marketeer controller as a function of another party's price for a comparable good, as required by claim 1.

In the Examiner's rejection of claims 2 and 21-25, the Examiner cites Woolston's Abstract, which discloses "presenting the good in a marketplace as an item for sale at an unidentified price, the marketplace being accessible to a buyer via the communications network and presenting the good for sale in the marketplace at the sale price".<sup>2</sup> However, Woolston's Abstract merely discloses an auction. The Applicant points out that although the price of a good during an auction may change, this feature of an auction does not disclose "an unspecified fixed price". Specifically, the Applicant respectfully requests that the Examiner consider each word of the claim. The terms "an unspecified fixed price" means that the price is both a fixed price (e.g., the price does not change once it is set) and the price is unspecified (e.g., unspecified by the seller at the time the data is received by the marketeer system). Although the price of a good in an auction may be unspecified (e.g., it may change over time), the price of the good in the auction is not fixed (e.g., the price of the good during the auction changes throughout the course of the auction), as required by claim 1. Thus, there is nothing in these sections of Woolston that disclose that the marketeer system receives data representing the independent seller's agreement to sell the good at an unspecified fixed price to be determined by the marketeer controller as a function of another party's price for a comparable good, as required by claim 1.

For at least the reasons noted above, Nahan, Stack, Reuhl, and Woolston either alone or in combination, do not disclose "receiving data from an independent seller..., the data identifying a good offered for sale by the independent seller and representing the independent seller's agreement to sell the good at an unspecified fixed price to be determined by the marketeer controller as a function of another party's price for a comparable good, in accordance with a predetermined method", as required by claim 1. Thus, claim 1 and its dependents are patentable over the combination of Nahan, Stack, Reuhl, and Woolston. Furthermore, claims 16, 18, 21, 25, and their dependents are patentable over the combination of Nahan, Stack, Reuhl, and Woolston for at least the reasons noted above with respect to claim 1.

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<sup>2</sup> Page 8 of the Office Action dated July 22, 2010.

Accordingly, the Applicant respectfully requests the withdrawal of the 35 U.S.C. §103(a) rejection of claims 1-27.

**CONCLUSION**

Applicant respectfully submits that the claims are in condition for allowance, and notification to that effect is earnestly requested. The Examiner is invited to telephone the undersigned at (408) 660-2011 to facilitate prosecution of this application.

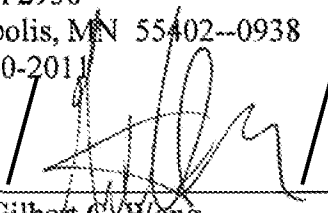
If necessary, please charge any additional fees or deficiencies, or credit any overpayments to Deposit Account No. 19-0743.

Respectfully submitted,

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Date 10/21/2010

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**CERTIFICATE UNDER 37 CFR 1.8:** The undersigned hereby certifies that this correspondence is being filed using the USPTO's electronic filing system EFS-Web, and is addressed to: Mail Stop Amendment, Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450 on this 21 day of October, 2010.

Dawn R. Shaw

Name

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Signature